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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 48

THE UNITED STATES, PETITIONER

vs.

MABEL S. ANDREWS, EXECUTRIX OF THE ESTATE OF MATTHEW ANDREWS, DECEASED

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MAY 8, 1937
CERTIORARI GRANTED OCTOBER 11, 1937

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 967

THE UNITED STATES, PETITIONER

vs.

MABEL S. ANDREWS, EXECUTRIX OF THE ESTATE OF MATTHEW ANDREWS, DECEASED

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In Court of Claims of the United States

No. 43,181

MABEL S. ANDREWS, EXECUTRIX OF THE ESTATE OF MATTHEW ANDREWS, DECEASED, PLAINTIFF

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

I. *Petition*

Filed December 12, 1935

To the Honorable Judges of the Court of Claims of the United States:

The Plaintiff, Mabel S. Andrews, Executrix, respectfully represents:

I

That she is the duly appointed executrix of the estate of Matthew Andrews, deceased; that such appointment was duly made and approved by the Probate Court of Cuyahoga County, Ohio; that such court is duly authorized under the laws of Ohio to administer estates; that such appointment is in full force and effect and said decedent, Matthew Andrews, and this plaintiff as executrix was and is a resident of Gates Mills, Ohio.

2 II

That this is a suit against the United States for the recovery of an overpayment of Federal income taxes for the calendar year 1930 in the amount of $5,552.98.

III

That under the provisions of the Act of Congress, approved May 29, 1928, entitled "Revenue Act of 1928" (Chap. 852, 45 Stat. 795) plaintiff as such executrix prepared and duly filed on or about March 15, 1931, with the Collector of Internal Revenue at Cleveland, Ohio, a return of the income of the estate of Matthew Andrews, deceased, for the calendar year 1930, on Form 1040 furnished by the Commissioner of Internal Revenue, such return disclosed a gross income of $121,949.89 of which $110,891.50 represented alleged dividends from domestic corporations and net income of $105,701.48 on which was computed a total tax of $12,800.30, which said tax was duly assessed and paid in quarterly installments as follows:

March 15, 1931	$3,200.30
June 15, 1931	$3,200.00
September 15, 1931	$3,200.00
December 15, 1931	$3,200.00

Of the above taxes so paid, $420.00 was refunded in September 1932.

IV

Thereafter, the Internal Revenue Agent in Charge at Cleveland, Ohio, informed plaintiff by letter dated December 14, 1931, that his office was recommending to the Commissioner of Internal Revenue that the return filed by plaintiff for the year 1930 be accepted as correct and further stated therein that his action was subject to approval in Washington and also should subsequent information be received which would materially change the amount reported, the Bureau would be obliged to redetermine the tax liability.

V

That as a result of a change in the capital structure of The M. A. Hanna Company, a corporation in which plaintiff owned stock in the year 1930, each shareholder of the original Seven Percent Cumulative First Preferred Stock Series "A" of said company was given the privilege of exchanging their original stock on the basis of one share for 1.27 shares of a new $7 Cumulative Preferred Stock. Plaintiff exercised her privilege of exchanging her fifteen hundred original shares and thereafter, together with other shareholders who had exercised their privilege, accepted an offer of certain underwriters to purchase each of their fractional .27 shares for $24.50 in cash. Plaintiff by acceptance of such offer received $36,750.00 in cash which was erroneously reported in the said estate tax return as dividends received in the year 1930 from The M. A. Hanna Company.

VI

Thereafter, the issue having been raised by the Internal Revenue Agent in Charge at Cleveland, Ohio, and in order to establish a uniform basis of treatment for their shareholders in connection with the transaction related in paragraph V, above, representatives of The M. A. Hanna Company conferred with the Bureau of Internal Revenue, the result of which was set forth in a letter from the Commissioner to the Internal Revenue Agent in Charge, Cleveland, Ohio, dated October 6, 1932 (symbols IT: ERR: CNW), to the effect that the amounts of cash received by the shareholders of The M. A. Hanna Company in 1930, as more fully described in paragraph V, above, represented proceeds from the sale of the fractional shares of new stock to underwriters and that the tax base would be the carryover base of the original issue of stock and accordingly would require a determination of gain or loss from such sale. Neither plaintiff nor The M. A. Hanna Company was notified of the aforesaid ruling in said letter until August 22, 1934.

VII

That applying the ruling of the Commissioner described in the preceding paragraph VI, the tax base of each of the fractional .27

shares of new stock sold was 27/127 of the base of the original stock which in the case of plaintiff was $92 per share assigned in the final determination of the estate tax of the estate of Matthew Andrews, deceased. On this basis the fractional shares of stock sold by plaintiff had an aggregate base of (27/127 X 1,500 X $92) or $29,338.58, for which $36,750.00 was received, resulting in a taxable profit of $7,411.42 instead of a dividend of $36,750.00, and effecting a reduction in the tax liability of $5,552.98 for the year 1930.

VIII

Thereafter, on February 1, 1933, the plaintiff filed a claim for refund for the year 1930 on Form 843 furnished by the Commissioner for $995.52 with the Collector of Internal Revenue at Cleveland, Ohio, setting forth therein as the bases of such claim the right to deduct certain alleged losses for the year 1930 which were sustained by plaintiff's investment in shares of stock in American Cuptor Corporation and Bertha Consumers Company.

5

IX

Thereafter, on June 28, 1934, and prior to any action by the Commissioner of Internal Revenue on claim for refund filed February 1, 1933, plaintiff filed an amended claim for $6,454.09 and supplement to said claim of February 1, 1933, setting forth therein as a basis therefor that the amount received, namely, $36,750.00, as set forth in paragraph V, above, was erroneously reported as a dividend in plaintiff's income tax return for the year 1930 and erroneously so considered by the Internal Revenue Agent in Charge at Cleveland, Ohio; that of said amount $29,338.58 represented a return of a proportion of the original investment applicable to the shares of new stock sold and that the balance $7,411.42 represented profit applicable to such shares of new stock sold.

X

That the Commissioner by letter dated November 2, 1935 (symbol IT:AR:C–1–PI), proposed to reject the amended claim filed June 28, 1934, although conceding that an overpayment had been made, for the reason that said original claim of February 1, 1933, and amendment thereto were filed subsequent to May 1, 1929, the effective date of Treasury Decision 4265. Thereafter, the Commissioner by letter dated November 25, 1935 (symbols IT:C:CC:4–LBB) notified plaintiff that a refund in the amount of $160.00 would be allowed on said original claim of February 1, 1933.

XI

That the claim for refund filed February 1, 1933, as amended June 28, 1934, is sufficient compliance with Section 322 of the Revenue Act of 1928 or corresponding section of subsequent Revenue Acts;